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SENATE BILL 491

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph J. Carraro

FOR THE

ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE COMMUNITY ACCESS
TO MEDIA AND INFORMATION ACT; PROVIDING FOR COMMUNITIES TO
ENSURE PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS TO CABLE
TELEVISION FRANCHISE AGREEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Community Access to Media and Information Act."

Section 2. DEFINITIONS.--As used in the Community Access
to Media and Information Act:

A. "access management organization" means an entity
contracted to provide the services of public, educational and
government access;

B. "political subdivision" means a unit of state
government with a population of three thousand five hundred or

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1 more;

2 C. "public, educational and government access"
3 means either combined or separate noncommercial channels that
4 are given to communities in exchange for the use of public
5 rights of way and that provide the general public with access
6 to media programming, training and equipment to facilitate the
7 use of bandwidth and spectrum; and

8 D. "service provider" means a corporation that
9 offers communications, information and digital services to a
10 consumer for remuneration.

11 Section 3. COMMUNICATIONS AND INFORMATION SERVICES--
12 FRANCHISE AGREEMENT--TEN PERCENT FOR PUBLIC USE.--

13 A. A political subdivision that enters into a
14 franchise agreement with a service provider shall require as a
15 term under the franchise agreement that no less than ten
16 percent of the bandwidth and spectrum or channels, whichever
17 may be greater, be made available for public use. The
18 franchise agreement shall include methods for the use of the
19 bandwidth or spectrum by noncommercial agencies, organizations
20 and institutions to provide communications and information
21 services in the public interest.

22 B. A telecommunications franchise agreement
23 pursuant to this section shall provide compensation of no less
24 than three percent and no more than five percent of the gross
25 revenues of the service provider as determined by a transparent

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1 audit mechanism.

2 Section 4. PUBLIC ACCESS NEEDS ASSESSMENT PRIOR TO
3 FRANCHISE AGREEMENT.--

4 A. Prior to execution of a franchise agreement, the
5 political subdivision and the service provider shall conduct an
6 assessment of the communications and information needs of the
7 community. The needs assessment shall be published as a matter
8 of public record and a public hearing conducted to review its
9 results. The hearing shall be conducted within ninety days of
10 completion of the needs assessment. A needs assessment shall
11 be conducted at least every five years during the course of a
12 franchise agreement to ascertain changes in the needs of the
13 community. The needs assessment shall be the basis for the
14 political subdivision and service provider to negotiate the
15 services to be provided.

16 B. If the needs assessment determines that public,
17 educational and government access is needed and requested by
18 the community, it shall be the responsibility of both the
19 service provider and the political subdivision to provide for
20 public access to cable communications and information services
21 through a franchise agreement that will set the obligations and
22 limits of the services.

23 C. On the expiration of an existing franchise in a
24 political subdivision and the beginning of re-franchising
25 negotiations, the service provider and the political

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1 subdivision shall conduct a needs assessment pursuant to
2 Subsections A and B of this section.

3 D. If during the term of an existing franchise
4 agreement the service provider changes ownership, a needs
5 assessment shall be conducted to determine the community's need
6 and demand for the establishment of public, educational and
7 government access, if these services are not already in
8 operation. If the needs assessment finds a community need and
9 demand for these services, the political subdivision and the
10 new service provider shall enter into negotiations to amend the
11 existing franchise agreement to include these services.

12 E. Minimum requirements of franchise agreements
13 executed pursuant to this section for public, educational and
14 government access shall include that:

15 (1) no less than two percent of the annual
16 gross revenues of the service provider shall be passed through
17 to an access management organization for general operations;
18 and

19 (2) no less than an additional one percent of
20 gross revenues above franchise fees of the service provider
21 shall be set aside for the provision of facilities and
22 equipment to be collected by the political subdivision and
23 passed through to the public, educational and government access
24 operation, and the distribution of funds shall be determined by
25 contract between the political subdivision and the access

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1 management organization.

2 F. If the service provider also operates as the
3 access management organization, the provider shall establish
4 clear administrative procedures to make equipment and channel
5 time available to the community and shall state on screen that
6 the public is watching an access channel. These requirements
7 shall be specifically described in the franchise agreement.

8 G. If a nonprofit organization operates as the
9 access management organization, the obligations in this section
10 shall be included in the contractual agreement between the
11 political subdivision and the nonprofit organization.

12 H. Nothing in this section prohibits political
13 subdivisions from obtaining additional funding, bandwidth and
14 spectrum or services from service providers other than the
15 limitations as provided by federal law.

16 Section 5. CABLE AND SATELLITE SERVICE.--Cable and
17 satellite service providers shall carry public, educational and
18 government access channels and services in those designated
19 market areas where they currently carry local commercial
20 channels on their systems.

21 Section 6. EMERGENCY ALERT CAPACITY.--A communications
22 and information service provider shall have the capacity for
23 broadcasting emergency alerts via their systems.

24 Section 7. ABANDONED FRANCHISE.--A cable system shall be
25 deemed abandoned if a renewed franchise agreement has not been

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1 completed by the termination date of the existing franchise
2 agreement unless a mutually agreed extension between the
3 political subdivision and the service provider for continuation
4 of negotiations has been reached.

5 Section 8. DIVERSITY IN PROGRAMMING--DISCRIMINATION
6 PROHIBITED.--

7 A. Service providers and political subdivisions
8 shall act to provide the greatest possible range of diversity
9 in programming and delivery of services to the public.

10 B. No service provider or political subdivision
11 covered under this section may discriminate against an
12 individual organization or corporate entity in regard to
13 service or the granting of contracts and franchises for reasons
14 of race, religion, ethnicity, age or sexual orientation.

15 Section 9. PUBLIC REGULATION COMMISSION--COMPLIANCE.--The
16 political subdivision and the service provider shall file a
17 report each year with the public regulation commission
18 certifying compliance with the provisions of this section.

19 Section 10. SUBSCRIBER--ACTION FOR COMPLIANCE.--A
20 subscriber to the services included in this section may bring
21 action to enforce compliance with the Community Access to Media
22 and Information Act.